

24 April 2019

Cherine Chalaby, Chair,  
ICANN Board of Directors

Re: Expedited Policy Development Process on the Temporary Specification for gTLD  
Registration Data

Dear Cherine,

Thank you for your [notification to the GAC](#) (8 March 2019) regarding the GNSO's approval of the policy recommendations developed in Phase 1 of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data.

As you may be aware, the GAC has highlighted public policy concerns regarding these recommendations in the [GAC Input on the EPDP Final Report](#) (20 February 2019) and most recently in the [GAC/ALAC Statement on EPDP](#) (13 March 2019). In addition, in the [GAC Barcelona Communiqué](#) (25 October 2018), the GAC specifically took note of the fact that *“existing requirements in the Temporary Specification governing gTLD Registration Data are failing to meet the needs of the law enforcement and cyber-security investigators”*, due in particular to the *“fragmented system for providing access consisting of potentially thousands of distinct policies depending upon the registrar involved”*<sup>1</sup>.

In terms of Advice to the ICANN Board, you will recall that the GAC issued advice on the matter of WHOIS and Data Protection Legislation in the [GAC San Juan Communiqué](#) (15 March 2018), [GAC Panama Communiqué](#) (28 June 2018) and [GAC Kobe Communiqué](#) (14 March 2019). At this stage, the GAC does not plan to issue additional Advice to the ICANN Board on this matter prior to its consideration of the GNSO policy recommendations developed in Phase 1 of the EPDP. In fact, as clarified recently in our GAC Kobe Communiqué Advice Clarification call (15 April 2019), the GAC would welcome the swift implementation of these phase 1 recommendations.

However, the GAC would like to take this opportunity to reiterate our request in the GAC Input on the EPDP Final Report that *“a legal review be undertaken to ensure that the purposes referenced in the Phase 1 Final Report take into account previous guidance provided by the European Data Protection Board (EDPB) and Article 29 Working Group (WP29)”*<sup>2</sup>.

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<sup>1</sup> See section IV.2, p. 5

<sup>2</sup> See on p.4 which lists three specific areas of review (with appropriate references in footnote): explicitly define legitimate purposes in a way which comports with the requirements of GDPR; take care in defining purposes in a manner which corresponds to its own organizational mission and mandate / do not conflate purpose; and that purposes be detailed enough.

Looking ahead, the GAC deems the EPDP Phase 1 policy recommendations to be a sufficient basis for the ICANN Community and organization to proceed - with all due urgency - to the completion of a comprehensive WHOIS model covering the entirety of the data processing cycle, from collection to disclosure, including accreditation and authentication, which would restore consistent and timely access to non-public registration data for legitimate third party interests<sup>3</sup>, in compliance with the GDPR and other data protection and privacy laws.

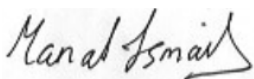
In the views of the GAC, as reflected in the recent [GAC Kobe Communiqué](#) Advice (14 March 2019), this involves:

- Expediently concluding and implementing a carefully scoped and appropriately resourced phase 2 of the EPDP on gTLD Registration Data, within 12 months or less, and with “*considerable and demonstrable*” progress, if not completion by ICANN66 in Montreal<sup>4</sup>;
- Instituting parallel work where appropriate to inform and complement EPDP activities (as has been the case with the Technical Study Group) , and to enable swift implementation of distinct policy recommendations as soon as they are agreed (as opposed to waiting for the end of all Phase 2 work), in particular in relation to a number of questions deferred from Phase 1 that would not involve dependencies on other uncompleted work.

In conclusion, the GAC would welcome the ICANN Board’s adoption the EPDP Phase 1 policy recommendations as soon as possible. The GAC commits to supporting subsequent developments with appropriate expertise towards the expeditious development and implementation of a comprehensive WHOIS regime, which balances the various legitimate public and private interests at stake, including privacy and accountability, for the foreseeable future.

In doing so, the GAC will closely monitor the progress of all relevant processes, participate in the EPDP, and continue to advise the ICANN Board accordingly.

Sincerely,



Manal Ismail  
Chair, Governmental Advisory Committee

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<sup>3</sup> The GAC has previously noted that such legitimate interests include civil, administrative and criminal law enforcement, cybersecurity, consumer protection and IP rights protection.

<sup>4</sup> See GAC EPDP Team representatives [input](#) (8 April 2019) on EPDP Phase 2 preparations as well as a recent [correspondence](#) from the US Department of Commerce to the ICANN Board (4 April 2019)